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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Glenn Liou,  
Plaintiff,  
v.  
CyraCom International Incorporated,  
Defendant.

No. CV-15-01167-PHX-DGC

**ORDER**

On March 2, 2016, Defendant CyraCom International, LLC filed a motion for summary judgment. Doc. 50. The motion is fully briefed. Docs. 60; 61. Neither party requested oral argument. The Court will grant Defendant's motion.

## I. Background.

The following facts are undisputed. Defendant CyraCom International, LLC (“CyraCom”) is a privately-held company that provides interpreting services to businesses. Doc. 51-1 at 2, ¶ 2. On August 13, 2012, CyraCom hired Plaintiff Menqiong “Glenn” Liou as a Mandarin interpreter. *Id.* at ¶ 3. When he was hired, Plaintiff signed documents indicating that he agreed to comply with CyraCom’s policies and procedures and CyraCom’s Interpreter Code of Ethics. *Id.* at 2, ¶ 3; 7-8; 10. CyraCom’s Interpreter Code of Ethics requires interpreters to provide “interpretation without comment,” where interpreters “render the message in a meaning-for-meaning manner without adding, omitting, or substituting information.” *Id.* at 2, ¶ 4; 10; 26, ¶ 3. Plaintiff understood that meaning-for-meaning interpretation was important to CyraCom. *Id.* at 83.

1 CyraCom's interpreter supervisors periodically monitor their interpreters' calls  
 2 with clients. *Id.* at 64, ¶ 2; 73, ¶ 2. Two of Plaintiff's supervisors, Brian Ko and Julio  
 3 Noriega, heard him violate the "interpretation without comment" or "meaning-for-  
 4 meaning" policy ("Policy") on numerous occasions. *Id.* After these incidents, both  
 5 supervisors provided Plaintiff with counseling and coaching on the Policy. *Id.* During  
 6 these coaching sessions, Plaintiff expressed to his supervisors his disagreement with the  
 7 Policy. *Id.* On April 29, 2014, Plaintiff was again heard violating the Policy. *Id.* at 26,  
 8 ¶ 2. As a result, Plaintiff received a "Needs Improvement" rating based on his lack of  
 9 compliance with the Policy. *Id.* at 26, ¶ 2; 31; 84.

10 In May 2014, Plaintiff discussed the "Needs Improvement" rating with Edmundo  
 11 Alvarez, the CyraCom Call Center Manager. *Id.* at 26, ¶¶ 1-2. Plaintiff told Alvarez that  
 12 the "Needs Improvement" rating was coded incorrectly, and asked him to rescind it. *Id.*  
 13 at ¶ 2. Plaintiff also told Alvarez that Plaintiff's supervisors had given him permission to  
 14 violate the Policy. *Id.* Alvarez investigated this claim and found that Plaintiff had not, in  
 15 fact, been given permission to violate the Policy. *Id.* at ¶ 4. Plaintiff also argued that he  
 16 should be given permission to violate the Policy. *Id.* On May 14, 2014, Plaintiff sent  
 17 Alvarez an email that explained his disagreement with the Policy and argued that  
 18 interpreters should be permitted to deviate at times from the Policy. *Id.* at 26-27, ¶¶ 4-5;  
 19 33-37; 85. Alvarez did not rescind Plaintiff's "Needs Improvement" rating. *Id.* at 27,  
 20 ¶ 6.

21 On June 2, 2014, CyraCom posted an internal job opening for a first-line  
 22 supervisor of CyraCom's Mandarin and Cantonese interpreters ("Supervisor Position").  
 23 *Id.* at 3, ¶ 5; 12-15. The Supervisor Position had a number of essential functions,  
 24 including providing meaning-for-meaning interpreting and complying with CyraCom's  
 25 policies and procedures. *Id.* at 3, ¶ 5; 13. The job posting also sought candidates who  
 26 possess certain knowledge, skills, and abilities, including that the candidate be skilled "at  
 27 communicating, both orally and in writing," and "in establishing and maintaining  
 28 effective work relationships." *Id.* at 3, ¶ 5; 14.

1       On June 5, 2014, Plaintiff applied for the Supervisor Position. *Id.* at 39-43.  
2 Because only four employees applied for the position, Alvarez interviewed each of the  
3 candidates. *Id.* at 27, ¶ 7; 39-43; 45-50; 52-56; 58-62. Each candidate was given an  
4 identical application packet, and each was asked identical questions. *Id.* Of the four  
5 candidates, Plaintiff was the only interpreter who had received a “Needs Improvement”  
6 rating on a recent evaluation and who had expressed disagreement with the Policy. *Id.* at  
7 27-28, ¶ 8. During his interview, Plaintiff focused on the technical aspects of  
8 interpreting, rather than management, and “had problems communicating ideas  
9 effectively during the interview.” *Id.* Alvarez concluded that, of the four candidates,  
10 Lily Situ had the best interview and was the most qualified person for the Supervisor  
11 Position. *Id.* at 28, ¶ 11. During her interview, Situ “provided specific examples of how  
12 she could motivate and coach a team” and “also showed that she was able to  
13 communicate more effectively than the other applicants.” *Id.* Situ received a higher  
14 average rating on the interview than the other three candidates. *Id.* at 43 (Liou: 3/5); 50  
15 (England: 3/5); 56 (Xu: 3/5); 62 (Situ: 4/5). Alvarez selected Situ for the Supervisor  
16 Position. *Id.*

17       On June 26, 2014, Plaintiff sent an email to CyraCom’s Vice President, Best  
18 Ihegborow, and copying CyraCom’s Chief Executive Officer, Jeremy Woan. *Id.* at 3,  
19 ¶ 6; 17-18. The subject line was “[t]he employment law expressly prohibits deceitful and  
20 unfair hiring practices.” *Id.* at 17; 86. In the email, Plaintiff asked Ihegborow to conduct  
21 “a thorough investigation” of the hiring process for the Supervisor Position. *Id.* at 17.  
22 Plaintiff stated that he had “heard some rumors” that Situ had received extra training  
23 before her interview, had been asked different interview questions, and had been  
24 generally preferred for the Supervisor Position before the interview. *Id.* at 17-18.  
25 Plaintiff stated that this email contained all of his complaints against CyraCom. *Id.* at 86.

26       Plaintiff’s June 26, 2014 email was shared with CyraCom’s Human Resources  
27 Director, Penie Porter. *Id.* at 2-3, ¶¶ 1, 6. Porter was asked to “investigate and address  
28 the selection process” for the Supervisor Position with Plaintiff. *Id.* at 3, ¶ 6. Prior to

1 meeting with Plaintiff, Porter spoke with Alvarez, who told her about Plaintiff's  
 2 expressed disagreement with the Policy and his assessment of the four candidates. *Id.* at  
 3 ¶ 7; 28, ¶ 12. Porter also spoke with Plaintiff's supervisor, Ko, who explained "that he  
 4 had spent time with the other three candidates, who were all on his interpreting team, and  
 5 that Ms. Situ had shown initiative on receiving training and coaching." *Id.* at 3, ¶ 7; 64,  
 6 ¶ 6.

7 After speaking with Alvarez and Ko, Porter met with Plaintiff to discuss the  
 8 selection process. *Id.* at 4, ¶ 8. Porter explained to Plaintiff why he was not selected for  
 9 the Supervisor Position, but he "did not accept [her] explanation and demanded that the  
 10 decision be reversed." *Id.* Porter then brought up Plaintiff's email questioning the  
 11 Policy, at which point Plaintiff raised his voice, slammed his fist on the desk, and  
 12 demanded to speak with Ihegborow. *Id.* Plaintiff left Porter's office. *Id.* Porter went to  
 13 Alvarez and explained what had happened. *Id.* at 4, ¶ 9; 29, ¶ 13. Alvarez and Porter  
 14 then summoned Plaintiff to Alvarez's office to discuss the selection process for the  
 15 Supervisor Position. *Id.* Plaintiff refused to look at or address Porter during the meeting.  
 16 *Id.* Plaintiff again refused to accept the explanations for why Alvarez had chosen Situ,  
 17 and left the meeting in the middle of the conversation. *Id.* Both Alvarez and Porter  
 18 believed that Plaintiff's "behavior was defiant, unprofessional, and unacceptable." *Id.*

19 After meeting with Alvarez and Porter, Plaintiff sent a second email to Ihegborow  
 20 and Woan. *Id.* at 4, ¶ 10; 20-21. Plaintiff stated that he had met with Porter twice and  
 21 thought "she was completely out of it." *Id.* at 20. Plaintiff complained that Porter was  
 22 not focusing on his complaints about the selection process, and that she had "failed to do  
 23 her homework." *Id.* Plaintiff said Porter needed to "dig in for more facts" about whether  
 24 Ko had shown preferential treatment in preparing Situ for the interview. *Id.* at 20-21.

25 Alvarez and Porter met with Plaintiff's direct supervisor, Julio Noriega. *Id.* at 4-5,  
 26 ¶ 11; 29, ¶ 14; 73, ¶ 4. They discussed Plaintiff's performance and recent behavior. *Id.*  
 27 After this meeting, Porter emailed Woan and copied Ihegborow and Alvarez. *Id.* at 23-  
 28 24. Porter summarized the meetings with Plaintiff and with Noriega. *Id.* Porter also

1 recommended that “Corrective Action” be taken. *Id.* at 24. Porter and Alvarez  
2 ultimately recommended that Plaintiff be terminated. *Id.* at 4-5, ¶ 11; 29, ¶ 14.  
3 Ihegborow agreed, and CyraCom terminated Plaintiff on June 30, 2014. *Id.* at 4-5, ¶ 11;  
4 29, ¶ 14. Prior to his termination, Plaintiff did not mention age discrimination in his  
5 meetings with Porter or his emails to Ihegborow and Woan. *Id.* at 5, ¶ 12; 86.

6 **II. Legal Standard.**

7 A party seeking summary judgment “bears the initial responsibility of informing  
8 the district court of the basis for its motion, and identifying those portions of [the record]  
9 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*  
10 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the  
11 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is  
12 no genuine dispute as to any material fact and the movant is entitled to judgment as a  
13 matter of law.” Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a  
14 party who “fails to make a showing sufficient to establish the existence of an element  
15 essential to that party’s case, and on which that party will bear the burden of proof at  
16 trial.” *Celotex*, 477 U.S. at 322. Only disputes over facts that might affect the outcome  
17 of the suit will preclude the entry of summary judgment, and the disputed evidence must  
18 be “such that a reasonable jury could return a verdict for the nonmoving party.”  
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

20 **III. Analysis.**

21 CyraCom seeks summary judgment on Plaintiff’s age discrimination and unlawful  
22 retaliation claims. CyraCom also objects to Plaintiff’s statement of facts, and seeks to  
23 recover its attorneys’ fees under A.R.S. § 12-341.01.

24 **A. Plaintiff’s Statement of Facts.**

25 CyraCom objects to Plaintiff’s statement of facts on a number of grounds.  
26 Doc. 61 at 1-3, 9. CyraCom objects to Plaintiff’s failure to include a controverting  
27 statement of facts as required by LRCiv 56.1(b). *Id.* at 1-2. Because of this failure,  
28 CyraCom argues that all of its facts are deemed admitted, and that it is entitled to

1 summary judgment on this basis alone. *Id.* at 2. CyraCom also identifies a number of  
2 paragraphs in Plaintiff's statement of facts that contain several facts, assertions not  
3 supported by admissible evidence, or improper argument, or that lack proper foundation.  
4 *Id.* at 9. The Court also notes that Plaintiff's statement of facts did not comply with the  
5 Court's case management order, which imposed a ten-page limit. Doc. 31 at 3, ¶ 7(c).  
6 Although the Court warned Plaintiff of the consequences of failing to comply with the  
7 Court's orders and applicable rules (*see* Doc. 55), the Court will not grant CyraCom  
8 summary judgment on this basis. At the same time, however, the Court will not find  
9 CyraCom's facts to be controverted unless Plaintiff provided admissible evidence to  
10 support his assertions.

11       **B. Age Discrimination.**

12 Plaintiff alleges that CyraCom's failure to promote him to the Supervisor Position  
13 was the result of age discrimination. CyraCom seeks summary judgment on two  
14 grounds: (1) Plaintiff failed to establish a prima facie case of age discrimination; and  
15 (2) CyraCom had a legitimate non-discriminatory basis for deciding not to hire Plaintiff  
16 for the Supervisor Position. Doc. 50 at 6-9.

17       To establish a prima facie case of age discrimination based on circumstantial  
18 evidence, a plaintiff must establish that: (1) he was a member of a protected class, ages  
19 40-70; (2) he applied for and was qualified for a position that was open to applicants;  
20 (3) the employer declined to hire him; and (4) the job was awarded to a substantially  
21 younger applicant with equal or inferior qualifications. *See Nidds v. Schindler Elevator*  
22 *Corp.*, 113 F.3d 912, 917 (9th Cir. 1996) (citations omitted). Once the prima facie case is  
23 established, the burden shifts to the employer to articulate a legitimate, nondiscriminatory  
24 reason for awarding the job to a younger applicant. *Aragon v. Republic Silver State*  
25 *Disposal Inc.*, 292 F.3d 654, 658 (9th Cir. 2002) (citing *McDonnell Douglas Corp. v.*  
26 *Green*, 411 U.S. 792, 802 (1973)). If the employer articulates a nondiscriminatory  
27 reason, the burden shifts back to the plaintiff to produce evidence that the employer's  
28 stated reason was pretextual. *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1220 (9th

1 Cir. 1998) (citation omitted). The plaintiff must establish that age was the “but for”  
 2 cause of the adverse action. *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176-77 (2009).

3 **1. Prima Facie Case.**

4 CyraCom asserts that Plaintiff failed to provide evidence that he had equal or  
 5 superior qualifications to Situ. Doc. 50 at 6-7.

6 CyraCom provides the following undisputed evidence to support this assertion.  
 7 Compliance with and enforcement of the Policy is an essential function of the Supervisor  
 8 Position. Doc. 51-1 at 3, ¶ 5; 13. Plaintiff had expressed disagreement with the Policy,  
 9 both in an email and while being coached by supervisors. *Id.* at 33-37; 64, ¶ 2; 73, ¶ 2.  
 10 Shortly before applying for the Supervisor Position, Plaintiff received a “Needs  
 11 Improvement” rating for violating the Policy. *Id.* at 26, ¶ 2; 31; 84. Plaintiff was the  
 12 only candidate for the Supervisor Position who had received a “Needs Improvement”  
 13 rating. *Id.* at 27-28, ¶ 8. Alvarez concluded that Lily Situ had performed the best of the  
 14 four candidates. *Id.* at 28, ¶ 11. Situ had provided specific examples of how she could  
 15 motivate and coach a team and had showed that she was able to communicate more  
 16 effectively than the other applicants. *Id.* Plaintiff had difficulty communicating ideas  
 17 effectively during the interview. *Id.* at 27-28, ¶ 8. Situ also received a higher average  
 18 interview score than Plaintiff or the other two applicants. *Id.* at 43; 50; 56.

19 Although Plaintiff disputes much of CyraCom’s evidence in his papers, he failed  
 20 to provide any admissible controverting evidence. Plaintiff asserts that he was given  
 21 permission to violate the Policy by his former supervisor, Sue Deng. Doc. 60 at 2; 11-12,  
 22 ¶ 7. But Plaintiff fails to provide any admissible evidence to overcome the evidence that  
 23 supervisors Ko and Noriega had not given him permission to violate the Policy. Doc. 51-  
 24 1 at 26, ¶ 4. Plaintiff contends that he did not, in fact, receive a “Needs Improvement”  
 25 rating for violating the Policy. Doc. 60 at 2, 8-10, ¶ 5. But Plaintiff admitted in his  
 26 deposition that he received the rating because he violated the Policy. Doc. 51-1 at 84.  
 27 Plaintiff argues that if he did receive such a rating, it was illegitimate and should be  
 28 reversed. Doc. 60 at 8-10, ¶ 5. CyraCom produced evidence that Plaintiff asked Alvarez

1 to rescind the rating, and that Alvarez investigated the rating and determined that it  
 2 should be upheld. Doc. 51-1 at 26-27, ¶¶ 1-2, 4, 6. Plaintiff takes issue with the import  
 3 of the “Needs Improvement” rating and his disagreement with the Policy, arguing that  
 4 they are discriminatory. Doc. 60 at 13-14, ¶ 8. CyraCom produced evidence to show that  
 5 compliance with and enforcement of the Policy is an essential function of the Supervisor  
 6 Position. Doc. 51-1 at 3, ¶ 5; 13. Plaintiff maintains, without providing any admissible  
 7 evidence, that he was not asked the same questions as Situ. Doc. 60 at 2-3; 15-18, ¶¶ 10-  
 8 15. Alvarez provided a sworn statement that he asked each of the four candidates the  
 9 same questions. Doc. 51-1 at 27, ¶ 7. Plaintiff’s unsubstantiated statements and  
 10 arguments are insufficient to overcome CyraCom’s undisputed facts.

11 Plaintiff also contends that Situ was not qualified to be an interpreter at CyraCom  
 12 because she did not have one year of experience. Docs. 60 at 7, ¶ 3; 60-1 at 24. Whether  
 13 Situ was eligible to be an interpreter at CyraCom is not the proper inquiry. Instead, the  
 14 issue is whether Situ was as qualified or less qualified for the Supervisor Position than  
 15 Plaintiff. The Supervisor Position did seek candidates with two years of professional  
 16 interpreter experience, which Situ lacked. Doc. 51-1 at 14, 59. But Plaintiff and the  
 17 other two candidates also fell short of this requirement. *Id.* at 40, 46, 53. If anything, this  
 18 shows that CyraCom did not strictly enforce the length-of-experience requirement. It  
 19 does not establish that Plaintiff had equal or superior qualifications to Situ.

20 Plaintiff has failed to present sufficient evidence for a reasonable jury to find that  
 21 he had equal or superior qualifications to Situ. Because this is an essential element of his  
 22 *prima facie* case of age discrimination, the Court will enter summary judgment on the age  
 23 discrimination claim. *Celotex*, 477 U.S. at 322.

24 **2. Legitimate, Nondiscriminatory Basis.**

25 The undisputed evidence shows that CyraCom had a legitimate, nondiscriminatory  
 26 basis for promoting Situ over Plaintiff, and Plaintiff has not presented evidence from  
 27 which a reasonable jury could find that the basis was pretextual. This too supports  
 28 summary judgment in favor of CyraCom.

1                   **C.     Unlawful Retaliation.**

2                   Plaintiff alleges that CyraCom's decision to terminate his employment was  
 3 unlawful retaliation for Plaintiff's request that CyraCom investigate the hiring of Situ for  
 4 the Supervisor Position and for his age discrimination claim. CyraCom seeks summary  
 5 judgment on two grounds: (1) CyraCom had a legitimate, nonretaliatory basis for  
 6 terminating Plaintiff; and (2) Plaintiff cannot show that this basis was a pretext for  
 7 unlawful retaliation. Doc. 50 at 9-10.

8                   To establish a prima facie case of unlawful retaliation, an employee must establish  
 9 that (1) the employee engaged in a protected activity; (2) the employer took an adverse  
 10 employment action against the employee; and (3) the employer would not have taken the  
 11 adverse employment action but for a design to retaliate. *Nilsson v. City of Mesa*, 503  
 12 F.3d 947, 953-54 (9th Cir. 2007); *see Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct.  
 13 2517, 2535 (2013) (clarifying that employee must show "but for" causation). If the  
 14 employee establishes a prima facie case of unlawful retaliation, the burden shifts to the  
 15 employer to articulate a legitimate, nonretaliatory reason for its actions. *Id.* at 954. If the  
 16 employer articulates such a reason, the employee bears the burden of producing evidence  
 17 to establish that the employer's proffered reason was merely a pretext for a retaliatory  
 18 motive. *Id.*

19                   **1.     Legitimate, Nonretaliatory Basis.**

20                   CyraCom contends that Plaintiff's insubordinate and unprofessional behavior  
 21 constitutes a legitimate, nonretaliatory basis for terminating Plaintiff's employment.  
 22 Doc. 50 at 10.

23                   CyraCom provided the following undisputed evidence. After he was informed  
 24 that Situ had been selected for the Supervisor Position, Plaintiff emailed CyraCom  
 25 executives and requested an investigation of the hiring process. Doc. 51-1 at 3, ¶ 6; 17-  
 26 18. Porter was tasked with conducting the investigation. *Id.* at 3, ¶ 6. Porter spoke with  
 27 Alvarez and Ko, and then met with Plaintiff to discuss her investigation and findings. *Id.*  
 28 at 4, ¶¶ 7, 8. During the meeting, Plaintiff did not accept Porter's explanation. Instead,

1 he became agitated, raised his voice, slammed his fist on the desk, demanded to speak  
 2 with CyraCom executives, and abruptly departed. *Id.* Porter went to Alvarez and  
 3 explained what had occurred. *Id.* at 4, ¶ 9; 29, ¶ 13.

4 Porter and Alvarez summoned Plaintiff for a second meeting. *Id.* During this  
 5 meeting, Plaintiff refused to address or look at Porter. *Id.* Plaintiff again refused to  
 6 accept the explanation for why Situ had been chosen for the Supervisor Position, and he  
 7 abruptly departed. *Id.* Plaintiff sent a second email to CyraCom executives demanding  
 8 an investigation into the hiring process. *Id.* at 4, ¶ 10; 20-21. Porter and Alvarez  
 9 discussed Plaintiff's behavior with Plaintiff's direct supervisor. *Id.* at 4-5, ¶ 11; 29, ¶ 14;  
 10 73, ¶ 4. Porter reported Plaintiff's behavior to CyraCom executives. *Id.* at 23-24. Porter  
 11 and Alvarez ultimately recommended Plaintiff's termination. *Id.* at 4-5, ¶ 11; 29, ¶ 14.

12 Although Plaintiff disputes much of CyraCom's evidence in his papers, he has  
 13 failed to provide any admissible controverting evidence. Plaintiff states that he never had  
 14 any issues of professionalism with one of his supervisors, Julio Noriega. Doc. 60 at 3.  
 15 Even if this is true, it does not bear on the events that transpired after he was denied the  
 16 Supervisor Position. Plaintiff claims that, during his meeting with Porter, he "acted in a  
 17 calm and professional manner. . . . as a prudent professional would." *Id.* at 3-4; 19-22,  
 18 ¶¶ 17-20. In fact, Plaintiff's response actually accuses Porter of losing her composure  
 19 during the meeting, stating "[o]ut of nowhere she flew to a rage, lost her composure, and  
 20 yelled 'If you walk out of my office, you are fired.'" *Id.* at 19-20, ¶ 18. Properly  
 21 presented, this could be sufficient to raise a genuine issue of disputed material fact, but  
 22 Plaintiff failed to provide any admissible evidence to support this assertion.

23 Plaintiff also asserts that "Defendant made unsubstantiated claims without an[y]  
 24 evidence." *Id.* at 4. As an example, Plaintiff argues that CyraCom failed to produce  
 25 phone recordings to prove its claim that he violated the Policy. *Id.* CyraCom provided  
 26 admissible evidence to prove this assertion when it submitted the affidavits of Brian Ko  
 27 and Julio Noriega. Doc. 51-1 at 64, ¶ 2; 73, ¶ 2. Affidavits may be used to establish that  
 28 there is no genuine dispute of material fact in support of a summary judgment motion.

1     See Fed. R. Civ. P. 56(c)(1)(A). Plaintiff's assertion that CyraCom made unsubstantiated  
2 claims is without merit.

3         CyraCom has produced undisputed evidence that it had a legitimate, nonretaliatory  
4 basis for terminating Plaintiff. The burden therefore shifts to Plaintiff to prove that there  
5 is a genuine dispute of material fact that must be resolved at trial as to whether  
6 CyraCom's basis for terminating Plaintiff was a pretext.

7             **2. Pretext.**

8         Plaintiff attempts to dispute CyraCom's reasons for terminating him by presenting  
9 his version of events – dubbed “the hiring plot” – in which Situ was groomed for the  
10 Supervisor Position before CyraCom even began soliciting applications for the position.  
11 Doc. 60 at 25-26, ¶ 23. According to Plaintiff, CyraCom's basis for terminating his  
12 employment was pretextual because “Defendant was not willing to accept and deal with  
13 Plaintiff's age discrimination claim and to investigate the hiring plot.” *Id.* at 22, ¶ 20.  
14 But Plaintiff failed to produce any evidence to support these assertions. Based on the  
15 undisputed evidence produced by CyraCom, the Court concludes that no reasonable jury  
16 could find for Plaintiff on this issue. CyraCom is therefore entitled to summary judgment  
17 on Plaintiff's unlawful discrimination claim. *Celotex*, 477 U.S. at 322.

18             **D. Attorneys' Fees.**

19         CyraCom requests attorneys' fees under A.R.S. § 12-341.01. Docs. 50 at 11; 61 at  
20 9. Arizona courts have declined to award attorneys' fees in the employment context  
21 when the action “sounded in tort and not contract,” as in the case of an age discrimination  
22 or wrongful termination claim. *See Thompson v. Better-Bilt Aluminum Prods. Co.*, 927  
23 P.2d 781, 790 (Ariz. Ct. App. 1996) (citing *Morris v. Achen Constr. Co., Inc.*, 747 P.2d  
24 1211, 1213 (Ariz. 1987)). For this reason, and because Plaintiff is proceeding pro se, the  
25 Court exercises its discretion to decline an award of fees.

26  
27  
28

**IT IS ORDERED:**

1. Defendant's motion for summary judgment (Doc. 50) is **granted**.
  2. The Clerk of Court shall enter judgment accordingly.

Dated this 20th day of May, 2016.

Daniel G. Campbell

David G. Campbell  
United States District Judge